

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT RICHARD PRICE,

Petitioner,

v.

WARDEN,

Respondent.

No. 2:23-cv-0731 AC P

ORDER

Petitioner is a county prisoner proceeding pro se, who has filed a request for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. ECF No. 2. However, petitioner's application is not on the form used by this district and therefore does not have all of the required information. Petitioner will be provided another opportunity to submit a fully completed application to proceed in forma pauperis.

Although petitioner has used the form for a petition for writ of habeas corpus, he appears to be attempting to bring a civil rights action pursuant to 42 U.S.C. § 1983 as his allegations relate to conditions of confinement. See ECF No. 1. On its face, the petition fails to state a claim under the habeas statute, 28 U.S.C. § 2254, because it does not challenge petitioner's conviction or sentence and success on the merits will therefore not guarantee his speedier release. See Nettles v. Grounds, 830 F.3d 922, 934-35 (9th Cir. 2016) (en banc) (for court to have habeas jurisdiction, success on the merits must necessarily result in petitioner's speedier release from custody). The

petition also fails to state a claim for relief under § 1983, the civil rights statute, because it identifies only the warden as a party although no claims are made against the warden. ECF No. 1 at 1, 3-4. To the extent other individuals named within the petition are intended as defendants, they are not identified as such and the petition fails to allege specific facts regarding how they violated petitioner's constitutional rights. See Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981) (complaint must allege in specific terms how each named defendant is involved); Rizzo v. Goode, 423 U.S. 362, 370-71 (1976) (complaint must demonstrate how conditions resulted in a deprivation of plaintiff's constitutional rights).

Therefore, in addition to filing a completed application to proceed in forma pauperis, petitioner will also be required to clarify whether he is attempting to bring a habeas petition or a civil rights action by filing an amended petition or civil rights complaint on the proper form, which will be provided. The type of action petitioner is attempting to bring will guide the court's evaluation of his claims, and will also determine the applicable filing fee. The filing fee in a habeas case is \$5.00, and is waived if the prisoner is granted in forma pauperis status. On the other hand, the filing fee for a civil rights action is \$350.00 and the prisoner is obligated to pay the fee over time from his trust account even if he is granted leave to proceed in forma pauperis.

Accordingly, IT IS HEREBY ORDERED that:

1. Petitioner shall submit, within thirty days from the service of this order, a fully completed in forma pauperis application. Failure to comply with this order will result in a recommendation that this action be dismissed without prejudice.

2. Within thirty days of the service of this order petitioner may file either (1) an amended petition containing only claims challenging his conviction or sentence or (2) an amended complaint containing only claims related to his conditions of confinement. The amended petition or complaint must bear the docket number assigned this case. Failure to file an amended petition or complaint will result in a recommendation that this action be dismissed without prejudice.

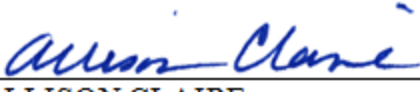
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1           3. The Clerk of the Court is directed to send petitioner an Application to Proceed In  
2 Forma Pauperis By a Prisoner and copies of the prisoner complaint form and form for application  
3 for writ of habeas corpus used in this district.

4 DATED: April 24, 2023

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7 UNITED STATES MAGISTRATE JUDGE  
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